

4 FAM 080

ADMINISTRATIVE CONTROL OF FUNDS

4 FAM 081 PURPOSE, APPLICABILITY, AUTHORITY, DEFINITIONS AND TERMINOLOGY

4 FAM 081.1 Purpose

(TL:FIN-356; 11-30-95)

This section states the policy of the Secretary of State and assigns responsibility for the administrative control of funds available to the Department of State, as required by Section 3679 of the Revised Statutes, 31 U.S.C. 1301, 1341, 1342 and 1517, as amended (referred to as Section 3679 of the revised statutes throughout this section), and other statutes and regulations listed in 4 FAM 081.3 below to do the following:

- (1) Establish policy with regard to administrative control over funds.
- (2) Prescribe a system for positive administrative control of funds, designed to restrict obligations and expenditures against each appropriation or fund to the amount available. (The term "expenditures" as used in this subchapter has the same definition as outlays, which are checks issued.)
- (3) Enable the Secretary to fix responsibility for overobligations and overdisbursements of appropriations, funds, apportionment's, reapportionment's, statutory limitations and allotments subject to the Anti-deficiency Act, as well as violations of nonstatutory limitations, restrictions and requirements imposed by the Department.
- (4) Provide procedures for dealing with violations of the Anti-Deficiency Act and other applicable statutes, as well as violations of limitations, restrictions and requirements imposed by the Department, including reporting requirements.

4 FAM 081.2 Applicability

(TL:FIN-356; 11-30-95)

The provisions of this policy apply to all Department of State programs, all allottees, and other personnel with responsibilities for administering, controlling, or otherwise overseeing the obligation and disbursement of funds entrusted to the Department of State.

4 FAM 081.3 Authorities

(TL:FIN-356; 11-30-95)

This regulation is issued pursuant to the following laws and regulations:

- (1) Section 3679 of the Revised Statutes (31 U.S.C. 1341, 1514 and 1517) (the Anti-Deficiency Act).
- (2) Section 1311 of the Supplemental Appropriations Act of 1955 (31 U.S.C. 1501).
- (3) Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1512(c)(2)).
- (4) OMB Circular No. A-34, Instructions on Budget Execution and related OMB guidelines.
- (5) Duties of the Secretary of State in the management of foreign affairs and authority to delegate functions, (22 U.S.C. 2651, 2656 and 2658).
- (6) Federal Managers' Financial Integrity Act of 1982, Pub. L. 97-255 (31 U.S.C. 3512).
- (7) Section 1405 of the National Defense Authorization Act for Fiscal Year 1991, Pub. L. 101-510 (31 U.S.C. 1552, 1553, 1555 and 1557).
- (8) Federal Credit Reform Act of 1990, Pub. L. 101-508 (2 U.S.C. 621 and 622).
- (9) Volume 4, Financial Management, Foreign Affairs Manual, Department of State.

4 FAM 082 DELEGATION OF RESPONSIBILITY

(TL:FIN-356; 11-30-95)

Delegation of administrative responsibility for control of funds shall be made at the highest practical level conformable to assigned program responsibilities for the purpose of assuring prudent financial management and full control over appropriations, apportionment's, statutory limitations, allotments and Department imposed limitations.

4 FAM 082.1 Fund Control Responsibilities

(TL:FIN-356; 11-30-95)

- a. The Under Secretary for Management acts for the Secretary in providing effective and coordinated administration and management.
- b. The Chief Financial Officer is responsible for issuance of implementing regulations and procedures which will provide for the effective and efficient administrative control of funds available to the Department.
 - (1) The Chief Financial Officer has designated the Deputy Assistant Secretary for Financial Services, as the officer responsible for issuing policy for administrative control of funds within the Department.
 - (2) The Chief Financial Officer delegates to the:
 - (a) Deputy Assistant Secretary for Budget and planning the responsibility for budget presentation, ascertaining the availability of funds, obtaining apportionment and issuing Allotment of Authorities or Advise of Allotments to program offices;
 - (b) Director, Domestic Financial Services the responsibility for the establishment and maintenance of financial records and reports; and
 - (c) Director, Financial Management Services the responsibility for the design, development, and documentation of financial systems.
- c. The Deputy Assistant Secretary, Budget and planning, and the Directors for Domestic Financial Services and Financial Management Services in coordination with allottees and other officials of the Department shall establish and maintain a system of accounts and records necessary to assure that obligations and disbursements do not exceed:
 - (1) amounts appropriated, apportioned, allotted or otherwise limited by internal classifications or limitations;

- (2) the balances in trust funds; and
- (3) reimbursements earned.

The system shall provide managers of funds timely status of funds information in order that they may prevent the obligation of funds in excess of allotments and limitations below the allotment level.

- d. The Assistant Secretaries of bureaus and office directors, i.e., financial coordinators, who receive Allotment Authorities or Advice of Allotments, are responsible for restricting allotments or operating allowances, if any, to amounts and purposes stated in the Allotment Authority and/or Advice of Allotment.
- e. The Chiefs of Missions or Principal Officers at posts are responsible for control of funds and assuring that the amounts provided to posts in allotments and any limitations below the allotment level (e.g., operating allowance, functions, etc.) are not exceeded and are used for the purposes stated in the document authorizing the funds availability. These responsibilities may be delegated in writing to the highest-ranking officials in the decision-making processes who have actual or constructive knowledge of what actions are taken in the obligation and expenditure of funds.

4 FAM 082.2 Prohibitions By Law

4 FAM 082.2-1 Prohibitions Of The Anti-Deficiency Act

(TL:FIN-356; 11-30-95)

As detailed in Section 3679 (31 U.S.C. 1341, 1342, 1517), no officer or employee of the United States shall:

- (1) Authorize or make an expenditure under any fund or appropriation in excess of the amount available therein.
- (2) Authorize or create an obligation under any fund or appropriation in excess of the amount available. An obligation is defined as "amounts of orders placed, contracts awarded, services received, and similar transactions during a given period requiring payment during the same or a future period."
- (3) Commit the Government to any contract or obligation for the payment of money for any purpose in advance of the appropriations made for such purpose, except as may be authorized by law.

- (4) Employ personal services in excess of those authorized by law, except in cases of emergency involving the safety of human life and the protection of property.
- (5) Accept any voluntary service, unless specifically authorized by law.
- (6) Authorize or create any obligation or make any disbursement in excess of an apportionment or reapportionment.
- (7) Authorize or create any obligation or make any disbursement in excess of the amount permitted by regulations which have been established by the agency head, and approved by the Director, OMB.

4 FAM 082.2-2 Prohibitions Of The National Defense Authorization Act For Fiscal Year 1991

(TL:FIN-356; 11-30-95)

Section 1405 of the National Defense Authorization Act for Fiscal Year 1991 revised controls on the availability of appropriation and fund account balances and procedures for closed accounts. Under the provisions, no officer or employee of the United States shall authorize or create an obligation or expenditure:

- (1) in excess of the original appropriation or fund account;
- (2) in excess of an apportionment or allotment to the original appropriation or fund account;
- (3) from a closed account—valid transactions must be charged against the current appropriation in excess of one percent of any current appropriation account for charges to a closed account;
- (4) during the current fiscal year that would cause cumulative increases for contract changes applicable to each prior fiscal year to exceed four million dollars without prior approval by the Secretary or a designee; and
- (5) during the current fiscal year that would cause cumulative increases for contract changes applicable to each prior fiscal year to exceed twenty five million dollars unless reported in writing by the Secretary to the authorizing Committees of Congress and to the Committees on Appropriations in both the House and Senate. The obligation may not be recorded until the report has been submitted and a period of thirty days has elapsed after the report

is submitted.

4 FAM 082.2-3 Prohibitions Of The Federal Credit Reform Act Of 1990

(TL:FIN-356; 11-30-95)

As prescribed by the Federal Credit Reform Act of 1990, no officer or employee of the United States shall:

Authorize or create any obligation and expenditure from each program account, financing account, and liquidating account in excess of the lesser of:

- (a) the amounts available for administrative expenses, direct loan subsidies, direct loan levels, guaranteed loan levels and any limitations specified in law; or
- (b) the amounts apportioned for the amounts specified above.

4 FAM 082.3 Penalties For Violations Of Laws

(TL:FIN-356; 11-30-95)

a. In addition to any penalty or liability under any other law, an officer or employee of the United States who commits a Section 3679 violation is subject to administrative discipline. Administrative discipline may consist of:

- (1) letter of reprimand or censure for the official personnel record of the officer or employee;
- (2) unsatisfactory performance rating;
- (3) transfer to another position;
- (4) suspension from duty without pay; or
- (5) removal from the job.

b. If the individual is convicted of knowingly and willfully violating Section 3679, that individual is subject to be fined up to \$5,000 or imprisoned up to 2 years or both.

4 FAM 082.4 Prohibitions By Regulations

(TL:FIN-356; 11-30-95)

No officer or employee of the Department of State shall authorize or create any obligation or disbursement in excess of limitations contained within apportionment and allotment levels (e.g., operating allowance or by function, object class and/or budget resource/project code).

4 FAM 082.5 Penalties For Violations Of Regulations

(TL:FIN-356; 11-30-95)

Any officer or employee of the Department of State who authorizes or creates an obligation or disbursement in excess of limitations below the apportionment and allotment level (e.g., operating allowance and/or function, object class and/or budget resource/project code) is subject to administrative discipline, if the circumstances warrant such action. Administrative discipline may consist of:

- (1) letter of reprimand or censure for the official personnel record of the officer or employee;
- (2) unsatisfactory performance rating;
- (3) transfer to another position;
- (4) suspension from duty without pay; or
- (5) removal from the job.

4 FAM 082.6 Documentary Evidence For Obligations

(TL:FIN-356; 11-30-95)

The Supplemental Appropriations Act of 1955 (31 U.S.C. 1501) as amended, Section 1311 of Pub. L. 663 of the 83rd Congress, provides that obligations of the Government of the United States be supported by documentary evidence of:

- (1) A binding agreement in writing between the parties, including Government agencies, in a manner and form and for a purpose authorized by law, executed before the expiration of the period of availability for obligation of the appropriation or fund concerned for specific goods to be delivered, real property to be purchased or

- leased, or work or services to be performed; or
- (2) A valid loan agreement, showing the amount of the loan to be made and the terms of repayment; or
 - (3) An order required by law to be placed with a Government agency; or
 - (4) An order issued pursuant to a law authorizing purchases without advertising when necessitated by public exigency or for perishable subsistence supplies or within specific monetary limitations; or
 - (5) A grant or subsidy payable:
 - (a) From appropriations made for payment of, or contributions toward, sums required to be paid in specific amounts fixed by law or in accord with formula prescribed by law; or
 - (b) Pursuant to agreement authorized pending litigation brought under authority of law.
 - (6) A liability which may result from pending litigation brought under authority of law; or
 - (7) Employment or services of persons or expenses of travel in accord with law, and services performed by public utilities; or
 - (8) Any other legal liability of the United States against an appropriation or fund legally available.

4 FAM 082.7 Other Provisions

(TL:FIN-356; 11-30-95)

- a. In connection with the submission of all requests for proposed appropriations to the Office of Management and Budget, the head of each Federal agency shall report that any statement of obligations furnished consists of valid obligations as defined in Section 1311, Pub. L. 83-663.
- b. Each report made pursuant to the above shall be supported by certifications of the officials designated by the head of the agency, and such certifications shall be supported by records evidencing the amounts which are reported as having been obligated. Such certifications and records shall be retained in the agency in such form as to facilitate audit and reconciliation for such period as may be necessary for such purposes. The officials designated by the head of the agency to make

certifications may not redelegate the responsibility.

- c. No appropriation or fund which is limited for obligation purposes to a definite period of time shall be available for expenditure after the expiration of such period except for liquidation of amounts obligated. No such appropriation or fund shall remain available for expenditure for any period beyond that otherwise authorized by law.
- d. Any statements of obligations of funds furnished by any agency of the Government to the Congress or any Congressional committee shall include only such amounts as may be valid obligations as defined in Section 1311, Pub. L. 83-663.

4 FAM 083 DEFERRALS AND REVISIONS

(TL:FIN-356; 11-30-95)

- a. Budgetary resources may be deferred as reserves to provide for contingencies under provisions of the Anti-Deficiency Act (31 U.S.C. 1512(a)); or they may be deferred for other reasons under the Impoundment Control Act (31 U.S.C. 1512(c)(2)), except that funds available for only one fiscal year may not be deferred throughout that year.
- b. Resources to be withheld from obligation temporarily through the apportionment process (as initiated by OMB or the Department) will not be allotted and a deferral report will be made to OMB. If the Congress takes no action to disapprove the deferral, it remains in effect until the earlier of:
 - (1) the date specified in the deferral statement;
 - (2) the end of the fiscal year if not expiring; or
 - (3) in the third quarter, if an expiring appropriation, it should be reviewed to determine the release date or whether it should be made a revision.

In the event Congress disapproves the deferral, an appropriate reapportionment request should be submitted to OMB no later than the day following passage of the resolution. Resources held unallotted pending occurrences or events, justification of need, reprogramming notifications and other actions of a managerial nature are excluded from the deferral process.

- c. Whenever the President determines that any part of budget authority is

not needed to carry out the full objectives or scope of programs for which it was provided:

- (1) A rescission report and apportionment request will be made to OMB.
- (2) Funds will be withheld from allotment.
- (3) If both Houses of Congress do not complete action on the rescission within 45 calendar days of continuous session following the President's proposal, apportionment may be obtained from OMB and funds may be allotted.

4 FAM 084 PRINCIPLES OF APPORTIONMENT

4 FAM 084.1 Apportionment

(TL:FIN-356; 11-30-95)

- a. The Deputy Assistant Secretary for Budget and planning is responsible for requesting apportionment of funds. Apportionments and reapportionments shall be made so as to prevent the obligation or expenditure of funds in a manner that would necessitate a deficiency or supplemental appropriation, and be within any legal limitations. The distribution of apportionments shall be based on a careful forecast of obligations to be incurred during the year. Apportionments are forwarded to OMB after detailed bureau financial plans supporting the desired apportionments have been analyzed and approved.
- b. All funding levels, including limitations below the allotment, are subject to apportionment control. The sum of all apportionments within each funding level may not exceed the apportionments for each succeeding funding level. Whenever funds are apportioned for time periods less than a fiscal year (e.g. calendar quarters), unobligated balances of apportioned funds at the end of a period are carried forward and available for obligation in subsequent apportionment periods within the fiscal year.
- c. The term transfer is used to designate movement of funds from one appropriation or fund account to another. When funds are transferred, they assume the symbol and title of the appropriation into which they have been moved. By contrast, the authority to obligate and spend funds made available from another agency shall be placed in an allocation account (also known as transfer appropriation account).

These accounts have the same symbol and title as the parent account with a two digit prefix code identifying the Department. Amounts are available for obligation only for the same period as the parent account from which the amounts have been transferred or allocated.

- d. Apportionments that anticipate a deficient appropriation or a supplemental under 31 U.S.C. 1515, will be specifically identified on the apportionment request. Such a deficiency apportionment advises Congress that funds appropriated to date are being obligated at a more rapid rate than previously anticipated.
 - (1) To qualify as a deficiency apportionment, the request must be required by:
 - (a) laws enacted subsequent to the transmittal to Congress of the annual budget for the year; or,
 - (b) emergencies involving the safety of human life, the protection of property, or the immediate welfare of individuals.
 - (2) The approval of a deficiency apportionment by OMB and its transmittal to Congress does not guarantee that Congress will approve any part of any associated supplemental requests and does not authorize the use of any amounts not yet provided.

4 FAM 084.2 Fund Control Below The Apportionment Level

(TL:FIN-356; 11-30-95)

Control of all funds subject to apportionment shall be maintained in organizational components through the formal allotting of funds. Allotments will be made at the highest practicable level compatible with assignments of responsibility for performance of program and administrative functions and to provide for effective and efficient funds management in carrying out the intent of Congress. The issuance of allotments in excess of amounts apportioned or reapportioned constitutes a violation of law.

4 FAM 084.3 Fund Control Below The Allotment Level

(TL:FIN-356; 11-30-95)

- a. Allottees are authorized to establish limitations below the allotment control level. Such limitations, which may be in the form of an operating allowance, function, object class and budget resource/project code, shall be specifically provided for in implementing regulations and procedures. Such limitations, within the amount and provisions of the allotment, shall be fixed in amount and changed only when authorized by the allottee.
- b. An obligation or disbursement incurred in excess of such classification or limitation established below the allotment level, while being subject to administrative discipline, if the circumstances warrant, does not in itself constitute an Anti-Deficiency Act violation in accordance with Section 3679 of the Revised Statutes, as amended. Where an overobligation or overexpenditure at the limitation level causes the allotment to be exceeded, a violation of Section 3679 will have occurred.

4 FAM 084.4 Recording Transactions

(TL:FIN-356; 11-30-95)

The system of accounts and reports prescribed under the regulations and procedures shall provide for prompt and accurate recording of all financial transactions having an effect on apportionment and fund controls including controls to conform with the Federal Credit Reform Act of 1990 and for prompt reporting on their status to each allottee and other administrative officials concerned.

4 FAM 085 FUND CONTROL

4 FAM 085.1 Apportioned And Unapportioned Funds

(TL:FIN-356; 11-30-95)

Apportioned funds shall be allotted and controlled within the amounts of and in the manner and characteristics of the apportionment. Funds or obligational authority not subject to apportionment shall be controlled in such a manner as to insure conformance with the provisions of Section 3679 of the Revised Statutes, as amended.

4 FAM 085.2 Apportionment And Allotment Of Anticipated Reimbursement

(TL:FIN-356; 11-30-95)

- a. Responsibility for making these apportionments and allotments shall be vested in the Chief Financial Officer or designee, who must through the use of prudent criteria, conservatively evaluate continuing servicing arrangements as well as new agreements for validity and collectibility before permitting such to be included in amounts allotted. Failure to realize such items does not relieve the designated official of the responsibility to reduce allotments and make such other funding adjustments including reapportionment, as may be necessary to bring these amounts within the total to be realized.
- b. Reimbursements will not be considered budgetary resources available for allotment unless:
 - (1) valid orders have been received or there is a history of recurring reimbursable services which the Department, by law, must provide and which can reasonably be expected to continue and for which agencies have a continuing obligation to make reimbursement; or
 - (2) goods or services have been furnished for which there is entitlement.
- c. Obligations may be incurred against anticipated reimbursements only after they have been allotted. Furthermore, an allottee shall not obligate or make commitments against allotted reimbursement funds known to be unearned or uncollectible. Obligations will not be incurred for orders from the public unless advance payment has been received.

4 FAM 085.3 Allotment Restrictions

(TL:FIN-356; 11-30-95)

Each allottee receiving an allotment of funds shall be held responsible for restricting obligations and/or expenditures to the amounts available under the terms of the allotment. This is accomplished through the prevalidation of all obligations and/or expenditures to the amounts in the allotment and/or operating allowance records to determine whether sufficient funds are available.

4 FAM 085.4 Documentation

(TL:FIN-356; 11-30-95)

The Allotment Authority, Advice of Allotment and documents providing funds availability below the allotment level must identify at a minimum:

- (1) amount available;
- (2) funding source (e.g., appropriations, reimbursements, etc.);
- (3) time period of availability;
- (4) authorizing officer and title;
- (5) justification; and
- (6) statement of reportable violations as explained in the following section.

4 FAM 085.5 Statement Of Reportable Violation On Funds Availability Documents

(TL:FIN-356; 11-30-95)

- a. The Allotment Authority, Advice of Allotment and documents providing funds availability below the allotment level will contain statements of the legal and administrative limitations and restrictions on the funds authorized. Example:

Advice of Allotment. You are hereby authorized to incur obligations during the period beginning and ending within the amounts of this allotment, in accordance with the following prescribed conditions and limitations, and for the purposes stated.

- b. Where funds are authorized by limitations below the allotment level, the appropriate codes in 4 FAH-1 will be shown with the applicable amount for each.
- c. Further, the Allotment Authorities or Advice of Allotment will contain a statement below the authorized fund amounts regarding the reporting of violations in accordance with 4 FAM 088.1 and 4 FAM 088.2. Example:
 - (1) Any violation of Section 3679 of the Revised Statutes, as amended, shall be reported immediately by the responsible officer in accordance with 4 FAM 08.1.
 - (2) Any violation of limitations below the allotment level shall be reported immediately in accordance with 4 FAM 088.2.
- d. Documents authorizing funds availability below the allotment level will contain a statement that any violation of the amount authorized shall be reported immediately in accordance with 4 FAM 088.2.

4 FAM 086 RELATIONSHIP TO THE ACCOUNTING SYSTEM

(TL:FIN-356; 11-30-95)

- a. The records of apportionment and allotments of appropriations, plus reports on status of funds and the status of obligations, are an integral part of the Department's accounting system. Control of all funds is maintained through the formal apportionment and allotment of funds. Allotments are made:
 - (1) at the highest practicable level compatible with assignments of responsibility for performance of program and administrative functions; and
 - (2) in numbers limited to those essential for effective and efficient funds management in carrying out the intent of Congress.
- b. Allotment records and records for funding limitations below the allotment levels are established for each allotment and limitation below the allotment to control obligations so that neither obligations, expenditures, nor disbursements may exceed the amounts appropriated, apportioned, allotted, or otherwise internally limited.
- c. Only the recipient of an allotment or operating allowance or persons designated by the allottee or allowance holder may authorize the incurrence of an obligation against funds provided. When an obligation is incurred, the document is immediately recorded against the allotment or operating allowance (see 4 FAM 086 b). Each allottee and allowance holder is furnished status of funds and status of obligation reports at least monthly, showing obligations and expenditures incurred.
- d. To assure that recorded documents meet the requirements of Section 1311 of Pub. L. 83-663 and that no violations of Section 3679 of the Revised Statutes have occurred, both the documentation and the records must be verified on a monthly and continuing basis throughout the fiscal year. As part of the review and verification process, special attention is given prior to the close of each fiscal year. All obligations must meet the criteria stated in Section 1311, Pub. L. 83-663. A listing of all unliquidated obligations by obligation number is prepared and retained as a permanent record. The Director, Domestic Financial Services certifies the year-end or other reports that all obligations meet Section 1311, Pub. L. 83-663 specify requirements based on allottees' certifications.

4 FAM 087 CRITERIA FOR ESTABLISHING AND RECORDING OBLIGATIONS, AND FOR DISBURSEMENTS

4 FAM 087.1 Definition Of Obligations Incurred

(TL:FIN-356; 11-30-95)

Obligations incurred are defined as amounts of orders placed, contracts awarded, services rendered, and similar transactions during a given period that will require payments during the same or a future period. Such amounts include payments not preceded by recorded obligations and reflect adjustment for differences between obligations and actual payments. In those cases where the exact amount of an obligation is not known at the time it is incurred, the best estimate of the amount to be paid subsequently is used.

4 FAM 087.2 Obligation Validity Criteria

(TL:FIN-356; 11-30-95)

- a. Uniform Foreign Affairs Regulations (For State and USIA) for Obligation Validity Criteria are published in 4 FAM 050 . The detailed Department procedures and documents for complying with the legal requirements and for processing and recording of obligations and disbursements require the following:
 - (1) Obligations and disbursements are to be reported promptly and recorded at the earliest possible time.
 - (2) Obligations and disbursements must be identified with an appropriation or fund at the time incurred.
 - (3) Recording of an obligation already established is not to be delayed even if it is discovered that there is a lack of funds.
 - (4) Perform periodic reviews not less frequently than monthly to insure that unliquidated obligation balances and disbursements are valid.
 - (5) Procedures specifying who is responsible for recording obligations and disbursements in the accounts.
 - (6) Recording an obligation that exceeds funds available. Responsible officials are to be notified promptly that an apparent violation of

Section 3679 of the Revised Statutes has occurred and that further obligations should not be incurred.

- b. Data on proposed obligations (reservations, commitments, etc.) may be accumulated in the accounting records prior to their becoming valid obligations.

4 FAM 088 RESPONSIBILITY FOR REPORTING VIOLATIONS

4 FAM 088.1 Responsibility For Reporting Violations Of Laws

4 FAM 088.1-1 Internal Reporting

(TL:FIN-356; 11-30-95)

- a. Any person with knowledge of a possible violation of Section 3679 of the Revised Statutes, as amended, shall report it immediately to the allottee or the designee and to the Director, Domestic Financial Services.
- b. A report containing the information required by 4 FAM 088.1-5 shall be prepared by the allottee and transmitted immediately to the Director, Domestic Financial Services. Subsequent actions taken to correct the cause of a violation do not eliminate that violation. It is still required to be reported.
- c. The Director, Domestic Financial Services prepares the reports of Anti-Deficiency Act violations for review, approval and submission as outlined in 4 FAM 088.1-3, 4 FAM 088.1-5 and 4 FAM 088.1-6 .

4 FAM 088.1-2 Report To The Inspector General

(TL:FIN-356; 11-30-95)

When the allottee and/or the Director, Domestic Financial Services determine that a violation may be associated with criminal activity, the Director, Domestic Financial Services will provide the information supporting the determination to the Office of the Inspector General (OIG). If the OIG investigation supports the determination, the OIG will be responsible for recommending to M/DGP that administrative action be taken.

4 FAM 088.1-3 External Reporting

(TL:FIN-356; 11-30-95)

- a. Responsibility for the preparation and submission of reports of violations of the Anti-Deficiency Act, to the President, through the Director of OMB, and to the Congress in the prescribed manner is assigned to the Chief Financial Officer.
- b. The Office of the Legal Adviser reviews each report to the President and Congress for compliance with all applicable laws and regulations.
- c. The Under Secretary for Management reviews, and recommends approval and submission by the Secretary of the reports of the Anti-Deficiency Act violations.

4 FAM 088.1-4 Types Of Violations To Be Reported

(TL:FIN-356; 11-30-95)

- a. **Anti-Deficiency Act Violations to be Reported**—Section 3679 of the Revised Statutes (31 U.S.C. 1341 and 1517), provides that there shall be furnished by the agency head to the President, through the Director of the Office of Management and Budget, and to the Congress, information on violations of the following types:
 - (1) **Overobligation or Overexpenditure of an Appropriation or Fund**—This is any case where an officer or employee of the United States has made or authorized an expenditure from or created or authorized an obligation against any appropriation or fund, including revolving funds, in excess of the amount available in the account.
 - (2) **Contract or Obligation in Advance of an Appropriation**—This is any case where an officer or employee of the United States has involved the Government in a contract or other obligation for the payment of money for any purpose in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law.
 - (3) **Acceptance of Voluntary Service**—This is any case where an officer or employee of the United State has accepted voluntary service for the United States or employed personal services in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property.
 - (4) **Overobligation or Overexpenditure of an Apportionment or**

Reapportionment—This is any case where an officer or employee of the United States has authorized or created an obligation or made an expenditure in excess of an apportionment or reapportionment. This includes adjustments that cause obligations in expired accounts to exceed the apportionment for the year in which such obligations were incurred.

- (5) **Overobligation or Overexpenditure of an Allotment**—This is any case where an officer or employee of the United States has authorized or created an obligation or made an expenditure in excess of the amount permitted by the prescribed and approved administrative control system.

b. **National Defense Authorization Act for Fiscal Year 1991**

Violations to be Reported—The provisions of Section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (31 U.S.C. 1551-1557) resulted in major changes in determining whether there has been a violation of the Anti-Deficiency Act. Violations are required to be reported when the following conditions occur.

- (1) **New Obligations and Expenditures or Adjustments to Obligations and Expenditures Exceed the Original Appropriations**—This is any case where an officer or employee of the United States has made or authorized an expenditure from or created or authorized an obligation against any appropriation or fund account in excess of the amount available in the original appropriation or fund account.
- (2) **New Obligations and Expenditures or Adjustments to Obligations and Expenditures that Exceed the Amount Apportioned or Allotted**—This is any case where an officer or employee of the United States has made or authorized an expenditure from or created or authorized an obligation against any appropriation or fund account in excess of the amount apportioned or allotted to the original appropriation or fund account.
- (3) **New Obligations or any Expenditures in Canceled Accounts**—This is any case where an officer or employee of the United States has made or authorized an expenditure from or created or authorized an obligation against an account that was closed pursuant to sections 1552, 1555, or 1557 of Title 31, United States Code. Valid transactions must be charged against the current appropriation (see the following paragraph).
- (4) **New obligations or any expenditures to pay for closed**

obligations exceed one percent of unexpired

appropriations—This is any case where an officer or employee of the United States has authorized or created an obligation or made an expenditure in excess of one percent of the unexpired appropriation to pay any combination of withdrawn and closed obligations.

c. Federal Credit Reform Act of 1990 Violations to be Reported—

Provisions of the Federal Credit Reform Act of 1990 resulted in Anti-Deficiency Act violation reporting for all direct loan and financing accounts violations of the following nature:

- (1) **Overobligation or Overexpenditure of the Subsidy**—This is any case where an officer or employee of the United States has made or authorized an expenditure or created or authorized an obligation, including a commitment, that is in excess of the direct loan subsidy or the guaranteed loan subsidy.

Modifications of direct loans or loan guarantees that result in obligations in excess of apportioned unobligated balances of subsidy amounts are violations.

- (2) **Overobligation or Overexpenditure of the Credit Level Supportable by the Enacted Subsidy**—This is any case where an officer or employee of the United States has made or authorized an expenditure or created or authorized an obligation, including a commitment, that is in excess of the credit program level. This includes obligations or expenditures that are in excess of the direct loan level, the guaranteed loan level or any limitations on the loan level or the Federal share of guaranteed loan levels. The credit program level must be supportable by the enacted subsidy, regardless of whether the subsidy is positive or negative.

- (3) **Overobligation or Overexpenditure of the Amount Appropriated for Administrative Expenses**—This is any case where an officer or employee of the United States has made or authorized an expenditure or created or authorized an obligation, including a commitment, that is in excess of the amount appropriated for administrative expenses.

- (4) **Obligation or Expenditure of the Lapsed Unobligated Balance of the Subsidy, Except to Correct Mathematical or Data Input Errors in Calculating Subsidy Amounts**—This is any case where an officer or employee of the United States has made or authorized an expenditure or created or authorized an obligation, including a

commitment, against unobligated subsidy balances after the period of obligational authority has expired. Correction of mathematical or data input errors up to the amount of the lapsed unobligated balance of the subsidy are specifically exempted. Corrections of these errors in excess of the amount of the lapsed unobligated balance of the subsidy are violations.

- d. Violations involving subapportionments relating to allocation accounts will be reported by the agency that administers the allocation account.
- e. Real violations of the above nature that are one-half dollar or less and that are apparently absolved through rounding need not be reported.

4 FAM 088.1-5 Report To The President

(TL:FIN-356; 11-30-95)

The report to the President will be in the form of a letter (original and three copies) to the President, forwarded through the Director of OMB. The opening sentences of the letter will identify it as "... a report on a violation of Section 3679 of the Revised Statutes, as amended." The letter will set forth the following data, preferably in the sequence outlined:

- (1) The title and symbol (including the fiscal year) of the appropriation or fund account, the amount involved for each violation, and the date on which the violation occurred.
- (2) The name and position of the officer(s) or employee(s) responsible for the violation.
- (3) of allotment, overobligation of apportionment, or overexpenditure of an appropriation), the primary reason or cause, and any statement of the responsible officer(s) or employee(s) with respect to any circumstances believed to be extenuating.
- (4) A statement of the administrative discipline imposed and any further steps taken with respect to the officer(s) or employee(s), or an explanation as to why no disciplinary action is considered necessary.
- (5) A All the pertinent facts of the violation, including the type of violation (e.g., overobligation statement of any additional action taken by, or at the direction of, the Secretary, including any new safeguards provided to prevent recurrence of the same type of violation.
- (6) A statement regarding the adequacy of the system of

administrative control prescribed by the Secretary and approved by OMB. If changes in the regulations are needed, in the judgment of the Secretary, proposals will be submitted to OMB.

- (7) If another agency is concerned, a statement concerning the steps taken to coordinate the report with the other agency must be provided.

4 FAM 088.1-6 Report To The Congress

(TL:FIN-356; 11-30-95)

The report to the Congress will be in the form of identical reports to the Presiding Officer of each House. One copy of the report to the Congress will be submitted to OMB with the report to the President, unless the reports to the Congress and to the President are substantially identical. If identical, a statement to this effect will be included in the report to the President.

4 FAM 088.1-7 Reports On GAO Findings

(TL:FIN-356; 11-30-95)

Reports are to be made on violations not previously reported that are included in findings of the General Accounting Office in connection with audits and investigations. In these cases, the report will contain an explanation as to why the violation was not discovered and previously reported by the Department. If the Department does not agree with the General Accounting Office that a violation has actually occurred, the report required by the OMB Circular No. A-50 will explain the reason for the Department's point of view.

4 FAM 088.2 Reporting Violations Of Regulations

4 FAM 088.2-1 Initial Reporting

(TL:FIN-356; 11-30-95)

- a. Any person knowledgeable of an obligation or disbursement incurred in excess of an operating allowance or other limitations below the allotment level or for a purpose or time other than stated in the allotment or operating allowance document will report the circumstances immediately to the operating allowance holder, the allottee and the Director, Domestic Financial Services.

- b. The allottee in concert with the Director, Domestic Financial Services will determine, based on the information received, whether an additional investigation or review of the circumstances is required. When a determination is made that an investigation or review is required, a team of at least two individuals from the bureau/office or from another bureau, office, post or the Bureau of Finance and Management Policy will be assigned to perform the investigation or review. Not more than one individual from the bureau/office involved may be a member of the team. The results of the investigation or review will be submitted in writing to the allottee of the bureau/office. A copy will be sent to the Director, Domestic Financial Services.
- c. When a determination is made that an investigation or review is not required, the results of the determination will be documented and maintained by the allottee and the Director, Domestic Financial Services.
- d. Subsequent actions taken to correct the cause of a violation do not eliminate that violation. It is still required to be reported.
- e. At the end of each quarter, unless an interim report is warranted, a summary report will be submitted by the Director, Domestic Financial Services to the Chief Financial Officer indicating the number and type of violations and action proposed or taken.

4 FAM 088.2-2 Recommendation For Administrative Action

(TL:FIN-356; 11-30-95)

The Director, Domestic Financial Services and the allottee will determine whether administrative action should be recommended. A determination not to recommend administrative action must be documented. When it is determined that administrative action should be recommended, the Director, Domestic Financial Services will recommend by memorandum to the Director General of the Foreign Service and Director of Personnel (M/DGP) that administrative action should be taken. M/DGP will determine whether administrative action should be taken and the type of action to be taken. (See 4 FAM 082.5 for types of penalties.)

4 FAM 088.2-3 Report To The Inspector General

(TL:FIN-356; 11-30-95)

When the allottee and/or Director, Domestic Financial Services determine that a violation may be associated with criminal activity, the Director, Domestic Financial Services will provide the information supporting the

determination to the Office of the Inspector General (OIG). If the OIG investigation supports the determination, the OIG will be responsible for recommending to M/DGP that administrative action be taken.

4 FAM 088.2-4 Reporting Format And Content

(TL:FIN-356; 11-30-95)

The format and content used to report violations of purpose and time as well as overobligations and overdisbursements will be the same as that required for reporting Anti-Deficiency Act violations to the President (4 FAM 088.1-5).

4 FAM 089 UNASSIGNED